

AGREEMENT
BETWEEN
THE CITY OF FRISCO, TEXAS (CITY)
AND
FREESE AND NICHOLS, INC. (CONSULTANT)
FOR
PROFESSIONAL ENGINEERING SERVICES

Made as of the _____ day of _____ in the year Two Thousand Eight:

BETWEEN the City: **The City of Frisco, Texas**
6101 Frisco Square Boulevard
Frisco, Texas 75034
Telephone: (972) 292-5400
Facsimile: (972) 292-5016

and the Consultant: **Freese and Nichols, Inc.**
1701 N. Market Street, Suite 500 LB 51
Dallas, Texas 75202
Telephone: (214) 217-2221
Facsimile: (214) 920-2565

for the following Project: **Professional design and engineering services for the relocation of utilities along the proposed TxDOT Right-of-Way for State Highway 289, from U.S. Highway 380 to FM 3537**

The City and the Consultant agree as set forth below.

THIS AGREEMENT is made and entered by and between the **City of Frisco, Texas**, a Home-Rule Municipal Corporation, hereinafter referred to as "City," and **Freese and Nichols, Inc.**, hereinafter referred to as "Consultant," to be effective from and after the date as provided herein, hereinafter referred to as "Agreement."

WHEREAS, the City desires to engage the services of the Consultant to perform professional engineering services for the relocation of utilities along the proposed

TxDOT Right-of-Way for State Highway 289, from U.S. Highway 380 to FM 3537, hereinafter referred to as "Project;" and

WHEREAS, the Consultant desires to render such professional engineering services for the City upon the terms and conditions provided herein.

NOW, THEREFORE, KNOW ALL PERSONS BY THESE PRESENTS:

That for and in consideration of the covenants contained herein, and for the mutual benefits to be obtained hereby, the parties agree as follows:

**ARTICLE 1
CONSULTANT'S SERVICES**

- 1.1 **Employment of the Consultant** – The City hereby agrees to retain the Consultant to perform professional engineering services in connection with the Project. Consultant agrees to perform such services in accordance with the terms and conditions of this Agreement.
- 1.2 **Scope of Services** – The parties agree that Consultant shall perform such services as are set forth and described in Exhibit "A," which is attached hereto and incorporated herein by reference for all purposes. The parties understand and agree that deviations or modifications to the scope of services described in Exhibit "A," in the form of written change orders, may be authorized from time to time by the City.
 - 1.2.1 **Requirement of Written Change Order** – "Extra" work, or "claims" invoiced as "extra" work, or "claims" which have not been issued as a duly executed, written change order by the Frisco City Manager, will not be authorized for payment and/or shall not become part of the subcontracts. A duly executed written change order shall be preceded by the Frisco City Council's authorization for the Frisco City Manager to execute said change order.
 - 1.2.2 **DO NOT PERFORM ANY EXTRA WORK AND/OR ADDITIONAL SERVICES WITHOUT A DULY EXECUTED WRITTEN CHANGE ORDER ISSUED BY THE FRISCO CITY MANAGER.** Project Managers, Superintendents, and/or Inspectors of the City are not authorized to issue verbal or written change orders.
- 1.3 **Schedule of Work** – The Consultant agrees to commence work immediately upon the execution of this Agreement, and to proceed diligently with said work to completion as described in the Compensation Schedule / Project Billing / Project Budget attached hereto as Exhibit "B" and incorporated herein by reference for

all purposes, but in no event shall the Project be completed any later than July 31, 2009.

ARTICLE 2 THE CITY'S RESPONSIBILITIES

City shall do the following in a timely manner so as not to delay the services of Consultant:

- 2.1 **Project Data** – The City shall furnish required information, that it currently has in its possession, as expeditiously as necessary for the orderly progress of the work, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof.
- 2.2 **City Project Manager** – The City shall designate, when necessary, a representative authorized to act on the City's behalf with respect to the Project (the "Project Manager"). The City or such authorized representative shall examine the documents submitted by the Consultant and shall render any required decisions pertaining thereto as soon as practicable so as to avoid unreasonable delay in the progress of the Consultant's services. The Project Manager is not authorized to issue verbal or written change orders for "extra" work or "claims" invoiced as "extra" work.

ARTICLE 3 CONSULTANT'S COMPENSATION

- 3.1 **Compensation for Consultant's Services** – As described in "Article 1, Consultant's Services," compensation for this Project shall be on a lump sum basis, for an amount not to exceed Eighty Four Thousand and 00/100 Dollars (\$84,000.00), ("Consultant's Fee") and shall be paid in accordance with Article 3 and the Compensation Schedule / Project Billing / Project Budget as set forth in Exhibit "B."
 - 3.1.1 **Completion of Record Documents** – City and Consultant agree that the completion of the Record Documents and/or "As-Built" Documents, including hard copy formatting and electronic formatting, shall be completed, submitted to, and accepted by the City prior to payment of the final five percent (5%) of the Consultant's Fee, or Four Thousand Two Hundred and 00/100 Dollars (\$4,200.00). The electronic formatting shall be consistent with the standards established in Exhibit "C," City of Frisco Guidelines for Computer Aided Design and Drafting ("CADD"). Completion of the Record Documents and/or "As-Built" documents shall be included in the Consultant's Fee and considered to be within the Scope of Services defined under this Agreement.

- 3.1.2 **Disputes between City and Construction Contractor** – If the Project involves the Consultant performing Construction Administration Services relating to an agreement between a Construction Contractor (the "Contractor") and the City, and upon receipt of a written request by City, Consultant shall research previous and existing conditions of the Project, and make a determination whether or not to certify that sufficient cause exists for the City to declare the Contractor in default of the terms and conditions of the agreement. Consultant shall submit his findings in writing to the City, or submit a written request for a specific extension of time (including the basis for such extension), within fifteen (15) calendar days of receipt of the written request from the City. City and Consultant agree that if requested by the City, completion of this task shall be included in the Consultant's Fee and considered to be within the Scope of Services as defined under this Agreement.
- 3.1.3 **Consultation and Approval by Governmental Authorities and Franchised Utilities** – Consultant shall be responsible for identifying and analyzing the requirements of governmental agencies and all franchise utilities involved with the Project, and to participate in consultation with said agencies in order to obtain all necessary approvals and/or permissions. The Consultant shall be responsible for preparation and timely submittal of documents required for review, approval, and/or recording by such agencies. The Consultant shall be responsible for making such changes in the Construction Documents as may be required by existing written standards promulgated by such agencies at no additional charge to City.
- 3.1.4 **Substantial Compliance with Architectural Barriers Act** – Should the Project fall within the regulatory requirements of the Texas Architectural Barriers Act, Chapter 68 Texas Administrative Code , as it exists or may be amended (the "Barriers Act"), as solely determined by the City, Consultant shall comply with the Barriers Act. As part of the Scope of Services defined in this Agreement, it is the sole responsibility of the Consultant to identify and analyze the requirements of the Barriers Act and to become familiar with the governmental authorities having jurisdiction to approve the design of the Project. Consultant shall participate in consultations with said authorities in order to obtain approval for the Project. As part of the services provided under the Consultant's Fee, the Consultant shall obtain the Notice of Substantial Compliance for the Project from the Texas Department of Licensing and Regulation (the "TDLR"). The Consultant shall, without additional compensation, immediately correct any errors, omissions, or deficiencies in the design services and/or construction documents identified by TDLR and/or a Registered Accessibility Specialist ("RAS") at any phase of the Project, either by review of the construction documents, or inspection of the

Project at the commencement of construction, during the construction of the Project, or at the completion of construction.

3.1.4.1 **Submission of Construction Documents to TDLR** – The Consultant shall mail, ship, or hand-deliver the construction documents to TDLR not later than five (5) calendar days after the Consultant issues the construction documents for the Project.

3.1.4.2 **Completion of Registration Form to TDLR** – Consultant shall complete an Elimination of Barriers Project Registration Form (The “Form”) for each subject building or facility within the Scope of the Project, and submit the registration form(s) along with the applicable fees not later than fourteen (14) calendar days after the Consultant completes the submittal of the construction documents to TDLR.

3.1.4.3 **TDLR Approval of Construction Documents** – After review of the construction documents by TDLR, the Consultant shall be notified in writing of the results; however, it is the Consultant's responsibility to obtain TDLR's written comments. The Consultant shall address all comments that prevent TDLR approval of the construction documents, including comments relating to Conditional Approval that must be addressed in the design and construction of the Project. Consultant shall resubmit construction documents to TDLR for review prior to the completion of construction of the Project.

3.1.4.4 **TDLR Project Inspection** – Consultant shall request an inspection from TDLR or a TDLR locally approved RAS no later than thirty (30) calendar days after the completion of construction of the Project. The Consultant shall advise the City in writing of the results of each Project inspection. City reserves the right to verify the written results with TDLR at any time during design, construction, or at the completion of the Project.

3.1.4.5 **Corrective Modifications following TDLR Project Inspection**
- When corrective modifications to achieve substantial compliance are required, the TDLR inspector or the RAS shall provide the Consultant a list of deficiencies and a deadline for completing the modifications. Consultant shall provide the City with this list within five (5) calendar days of receipt. It is the sole responsibility of the Consultant to completely address the deficiencies by the stated deadline or to obtain a written notice of extension from the TDLR. When the corrective measures have been completed, Consultant shall provide the TDLR

(and/or the RAS who completed the inspection) and the City with written verification of the corrective measures completed.

- 3.1.4.6 **TDLR Notice of Substantial Compliance** – TDLR shall provide a Notice of Substantial Compliance to the City after the newly constructed Project has had a satisfactory inspection, or Consultant has submitted verification of corrective modifications. City and Consultant agree that the final five percent (5%) of Consultant's Fee, or Four Thousand Two Hundred and 00/100 Dollars (\$4,200.00) shall not be paid until the City is in receipt of the TDLR's Notice of Substantial Compliance for all Project components and/or phases of the Project.

- 3.2 **Direct Expenses** – Direct Expenses are included in the Consultant's Fee as described in Article 3.1 and include actual reasonable and necessary expenditures made by the Consultant and the Consultant's employees and subcontractors in the interest of the Project. All submitted Direct Expenses are to be within the amounts as stated in the Compensation Schedule / Project Billing / Project Budget set forth in Exhibit "B," and consistent with Exhibit "D," City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses. The Consultant shall be solely responsible for the auditing and accuracy of all Direct Expenses, including those of its subcontractors, prior to submitting to the City for reimbursement, and shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment for services; provided, however this shall not be the City's sole and exclusive remedy for said over-payment.

- 3.3 **Additional Services** – The Consultant shall provide the services as described in the Scope of Services as set forth in Exhibit "A" of this Agreement. If authorized in writing by the City, the Consultant shall provide additional services, to be compensated on an hourly basis in accordance with this paragraph ("Additional Services"). These services may include, but are not limited to:

- 3.3.1 Additional meetings, hearings, work-sessions, or other similar presentations which are not provided for or contemplated in the Scope of Services described in Exhibit "A."
- 3.3.2 Additional drafts and revisions to the Project which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.3 Additional copies of final reports and construction plans which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."

- 3.3.4 Photography, professional massing models which are not provided for or contemplated in the Scope of Services as described in Exhibit "A."
- 3.3.5 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on direct billable labor rates and expenses.
- 3.3.6 Compensation for Additional Services authorized by the City shall be in addition to the Consultant's Fee and shall be based on an hourly basis according to the following personnel rates. The rates set forth in this chart are subject to reasonable change provided prior written notice of said change is given to City.

Hourly Billable Rates by Position		
<i>Name</i>	<i>Position</i>	<i>Hourly Rate</i>
	Principal	\$210.00
	Project Manager	\$160.00
	Project Engineer	\$120.00
	Senior Engineering Designer	\$105.00
	Engineering Designer	\$90.00

- 3.4 **Invoices** – No payment to Consultant shall be made until the Consultant tenders an invoice to the City. The Consultant shall submit monthly invoices for services rendered, based upon the actual percentage of work complete at the time the invoice is prepared, or are to be mailed to City immediately upon completion of each individual task listed in Exhibit "B." On all submitted invoices for services rendered and work completed on a monthly basis, Consultant shall include appropriate background materials to support the submitted charges on said invoice. Such background material shall include, but is not limited to, employee timesheets, invoices for work obtained from other parties, and receipts and/or log information relating to Direct Expenses. All invoices for payment shall provide a summary methodology for administrative markup and/or overhead charges.
- 3.5 **Timing of Payment** – City shall make payment to Consultant for said invoices within thirty (30) days following receipt and acceptance thereof. The parties agree that payment by City to Consultant is considered to be complete upon mailing of payment by City. Furthermore, the parties agree that the payment is considered to be mailed on the date that the payment is postmarked.
- 3.6 **Disputed Payment Procedures** – In the event of a disputed or contested billing by City, only that portion so contested may be withheld from payment, and the undisputed portion will be paid. City shall notify Consultant of a disputed invoice, or portion of an invoice, in writing by the twenty-first (21st) calendar day after the date the City receives the invoice. City shall provide Consultant an opportunity to

cure the basis of the dispute. If a dispute is resolved in favor of the Consultant, City shall proceed to process said invoice, or the disputed portion of the invoice, within the provisions of Article 3.5. If a dispute is resolved in favor of the City, Consultant shall submit to City a corrected invoice, reflecting any and all payment(s) of the undisputed amounts, documenting the credited amounts, and identifying outstanding amounts on said invoice to aid City in processing payment for the remaining balance. Such revised invoice shall have a new invoice number, clearly referencing the previous submitted invoice. City agrees to exercise reasonableness in contesting any billing or portion thereof that has background materials supporting the submitted charges.

- 3.7 **Failure to Pay** – Failure of the City to pay an invoice, for a reason other than upon written notification as stated in the provisions of Article 3.6 to the Consultant within sixty (60) days from the date of the invoice shall grant the Consultant the right, in addition to any and all other rights provided, to, upon written notice to the City, suspend performance under this Agreement, and such act or acts shall not be deemed a breach of this Agreement. However, Consultant shall not suspend performance under this Agreement prior to the tenth (10th) calendar day after written notice of suspension was provided to City, in accordance with Chapter 2251, Subchapter "D" ("Remedy for Nonpayment") of the Texas Government Code. The City shall not be required to pay any invoice submitted by the Consultant if the Consultant breached any provision(s) herein.
- 3.8 **Adjusted Compensation** – If the Scope of the Project or if the Consultant's services are materially changed due to no error on behalf of Consultant in the performance of services under this Agreement, the amounts of the Consultant's compensation shall be equitably adjusted as approved by City. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be authorized by written change order duly executed by both parties before the services are performed.
- 3.9 **Project Suspension** – If the Project is suspended or abandoned in whole or in part for more than three (3) months, Consultant shall be entitled to compensation for any and all work completed to the satisfaction of City in accordance with the provisions of this Agreement prior to suspension or abandonment. In the event of such suspension or abandonment, Consultant shall deliver to City all finished or unfinished documents, data, studies, drawings, maps, models, reports, photographs, and/or any other items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment. If the Project is resumed after being suspended for more than three (3) months, the Consultant's compensation shall be equitably adjusted as approved by the City. Any additional amounts paid to the Consultant after the Project is resumed shall be agreed upon in writing by both parties before the services are performed.

ARTICLE 4 OWNERSHIP OF DOCUMENTS

- 4.1 **Documents Property of the City** – The Project is the property of the City, and Consultant may not use the documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any materials for any other purpose not relating to the Project without City's prior written consent. City shall be furnished with such reproductions of the Project, plans, data, documents, maps, and any other information as defined in Exhibit "A." Upon completion of the work, or any earlier termination of this Agreement under Article 3 and/or Article 8, Consultant will revise plans, data, documents, maps, and any other information as defined in Exhibit "A" to reflect changes while working on the Project through the date of completion of the work, as solely determined by City, or the effective date of any earlier termination of this Agreement under Article 3 and/or Article 8, and promptly furnish the same to the City in an acceptable electronic format. All such reproductions shall be the property of the City who may use them without the Consultant's permission for any purpose relating to the Project, including, but not limited to, completion of the Project, and/or additions, alterations, modifications, and/or revisions to the Project. Any reuse of the documents not relating to the Project shall be at the City's own risk.
- 4.2 **Documents Subject to Laws Regarding Public Disclosure** – Consultant acknowledges that City is a governmental entity and that all documents, plans, data, studies, surveys, drawings, maps, models, reports, photographs, and/or any items prepared or furnished by Consultant (and Consultant's professional associates and/or Sub-consultants) under this Agreement are instruments of service in respect of the Project and property of the City and upon completion of the Project shall thereafter be subject to the Texas Public Information Act (Texas Government Code, Chapter 552) and any other applicable laws requiring public disclosure of the information contained in said documents.

ARTICLE 5 CONSULTANT'S INSURANCE REQUIREMENTS

- 5.1 **Required General Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a general liability insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each occurrence, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by

return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

- 5.2 **Required Professional Liability Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, a professional liability (errors and omissions) insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount not less than One Million and 00/100 Dollars (\$1,000,000.00) for each claim, and Two Million and 00/100 Dollars (\$2,000,000.00) in the aggregate. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.
- 5.3 **Required Workers Compensation Insurance** – Consistent with the terms and provisions of Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to City, all Statutory Workers Compensation Insurance as required by the laws of the State of Texas. Such insurance policy shall be with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent service(s), and authorized to transact business in the State of Texas. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.
- 5.4 **Circumstances Requiring Umbrella Coverage or Excess Liability Coverage** – If Project size and scope warrant, and if identified on the checklist located in Exhibit "E," City of Frisco Contractor Insurance Guidelines, Consultant shall maintain, at no expense to the City, an umbrella coverage or excess liability coverage insurance policy with a company that maintains a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s), authorized to transact business in the State of Texas, in an amount of Two Million and 00/100 Dollars (\$2,000,000.00). Such policy shall require the provision of written notice to the City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail. Consultant shall furnish City with certificates evidencing such coverage prior to commencing work on the Project.

ARTICLE 6 CONSULTANT'S ACCOUNTING RECORDS

Records of Direct Expenses and expenses pertaining to services performed in conjunction with the Project shall be kept on the basis of generally accepted accounting

principles. Invoices will be sent to the City as indicated in Article 3.4. Copies of employee time sheets, receipts for direct expense items and other records of Project expenses will be included in the monthly invoices.

ARTICLE 7

AUDITS AND RECORDS / PROHIBITED INTEREST / VENDOR DISCLOSURE

The Consultant agrees that at any time during normal business hours and as often as the City may deem necessary, Consultant shall make available to representatives of the City for examination all of its records with respect to all matters covered by this Agreement, and will permit such representatives of the City to audit, examine, copy and make excerpts or transcripts from such records, and to make audits of all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and other data relating to all matters covered by this Agreement, and for a period of four (4) years from the date of final settlement of this Agreement or for such other or longer period, if any, as may be required by applicable statute or other lawful requirement.

The Consultant agrees that it is aware of the prohibited interest requirement of the City Charter, which is repeated on the Affidavit, attached hereto as Exhibit "F" and incorporated herein for all purposes, and will abide by the same. Further, a lawful representative of Consultant shall execute the Affidavit attached hereto as Exhibit "F." Consultant understands and agrees that the existence of a prohibited interest during the term of this Agreement will render the Agreement voidable.

Consultant agrees that it is further aware of the vendor disclosure requirements set forth in Chapter 176, Local Government Code, as amended, and will abide by the same. In this connection, a lawful representative of Consultant shall execute the Conflict of Interest Questionnaire, Form CIQ, attached hereto as Exhibit "G" and incorporated herein for all purposes.

ARTICLE 8

TERMINATION OF AGREEMENT / REMEDIES

City may, upon thirty (30) days written notice to Consultant, terminate this Agreement, for any reason or no reason at all, before the termination date hereof, and without prejudice to any other remedy it may have. If City terminates this Agreement due to a default of and/or breach by Consultant and the expense of finishing the Project exceeds the Consultant's Fee at the time of termination, Consultant waives its right to any portion of Consultant's Fee as set forth in Article 3 herein and agrees to pay any costs over and above the fee which the City is required to pay in order to finish the Project. On any default and/or breach by Consultant, City may elect not to terminate the Agreement, and in such event it may make good the deficiency in which the default consists, and deduct the costs from the Consultant's Fee due Consultant as set forth in Article 3 herein. If City terminates this Agreement and Consultant is not in default of the Agreement, Consultant shall be entitled to compensation for any and all work completed to the

satisfaction of the City in accordance with the provisions of this Agreement prior to termination.

In the event of any termination, Consultant shall deliver to City all finished and/or unfinished documents, data, studies, surveys, drawings, maps, models, reports, photographs and/or any items prepared by Consultant in connection with this Agreement prior to Consultant receiving final payment.

The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its rights to use any or all other remedies. These rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

ARTICLE 9 DISPUTE RESOLUTION / MEDIATION

In addition to all remedies at law, the parties may resolve/mediate any controversy, claim or dispute arising out of or relating to the interpretation or performance of this Agreement, or breach thereof, by voluntary mediation to be conducted by a mutually acceptable mediator.

ARTICLE 10

INDEMNITY

CONSULTANT SHALL RELEASE, DEFEND, INDEMNIFY AND HOLD HARMLESS CITY AND ITS CITY COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL DAMAGES, INJURIES (INCLUDING DEATH), CLAIMS, PROPERTY DAMAGES (INCLUDING LOSS OF USE), LOSSES, DEMANDS, SUITS, JUDGMENTS AND COSTS, INCLUDING REASONABLE ATTORNEY'S FEES AND EXPENSES (INCLUDING ATTORNEY'S FEES AND EXPENSES INCURRED IN ENFORCING THIS INDEMNITY), TO THE EXTENT CAUSED, IN WHOLE OR IN PART, BY THE NEGLIGENT, GROSSLY NEGLIGENT, AND/OR INTENTIONAL WRONGFUL ACT AND/OR OMISSION OF CONSULTANT, ITS OFFICERS, AGENTS, REPRESENTATIVES, EMPLOYEES, SUBCONTRACTORS, LICENSEES, INVITEES OR ANY OTHER THIRD PARTIES FROM WHOM CONSULTANT IS LEGALLY RESPONSIBLE, IN ITS/THEIR PERFORMANCE OF THIS AGREEMENT AND/OR ARISING OUT OF GOODS AND/OR SERVICES PROVIDED BY CONSULTANT PURSUANT TO THIS AGREEMENT, REGARDLESS OF THE JOINT OR CONCURRENT NEGLIGENCE OR STRICT LIABILITY OF THE CITY (HEREINAFTER "CLAIMS"). THIS INDEMNIFICATION PROVISION AND THE USE OF THE TERM "CLAIMS" IS ALSO SPECIFICALLY INTENDED TO APPLY TO,

BUT NOT LIMITED TO, ANY AND ALL CLAIMS, WHETHER CIVIL OR CRIMINAL, BROUGHT AGAINST CITY BY ANY GOVERNMENT AUTHORITY OR AGENCY RELATED TO ANY PERSON PROVIDING SERVICES UNDER THIS AGREEMENT THAT ARE BASED ON ANY FEDERAL IMMIGRATION LAW AND ANY AND ALL CLAIMS, DEMANDS, DAMAGES, ACTIONS AND CAUSES OF ACTION OF EVERY KIND AND NATURE, KNOWN AND UNKNOWN, EXISTING OR CLAIMED TO EXIST, RELATING TO OR ARISING OUT OF ANY EMPLOYMENT RELATIONSHIP BETWEEN CONSULTANT AND ITS EMPLOYEES OR SUBCONTRACTORS AS A RESULT OF THAT SUBCONTRACTOR'S OR EMPLOYEE'S EMPLOYMENT AND/OR SEPARATION FROM EMPLOYMENT WITH THE CONSULTANT, INCLUDING BUT NOT LIMITED TO ANY DISCRIMINATION CLAIM BASED ON SEX, SEXUAL ORIENTATION OR PREFERENCE, RACE, RELIGION, COLOR, NATIONAL ORIGIN, AGE OR DISABILITY UNDER FEDERAL, STATE OR LOCAL LAW, RULE OR REGULATION, AND/OR ANY CLAIM FOR WRONGFUL TERMINATION, BACK PAY, FUTURE WAGE LOSS, OVERTIME PAY, EMPLOYEE BENEFITS, INJURY SUBJECT TO RELIEF UNDER THE WORKERS' COMPENSATION ACT OR WOULD BE SUBJECT TO RELIEF UNDER ANY POLICY FOR WORKERS COMPENSATION INSURANCE, AND ANY OTHER CLAIM, WHETHER IN TORT, CONTRACT OR OTHERWISE. CONSULTANT IS EXPRESSLY REQUIRED TO DEFEND CITY AGAINST ALL SUCH CLAIMS; PROVIDED, HOWEVER, IF A COURT OF COMPETENT JURISDICTION SIGNS A JUDGMENT THAT BECOMES FINAL AND NON-APPEALABLE, DETERMINING THAT THE CITY (WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY) HAS JOINT, CONCURRENT OR SOLE NEGLIGENCE FOR THE CLAIMS, IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS (THE "JUDGMENT"), THEN CONSULTANT IS NOT REQUIRED TO INDEMNIFY OR DEFEND THE CITY TO THE EXTENT OF THE NEGLIGENCE APPORTIONED TO THE CITY FOR EACH CAUSE(S) OF ACTION IDENTIFIED IN THE JUDGMENT. IN THE EVENT THE JUDGMENT PROVIDES THAT CITY IS JOINTLY, CONCURRENTLY, OR SOLELY NEGLIGENT FOR THE CLAIMS REFERRED TO THEREIN, CITY AGREES TO REIMBURSE CONSULTANT FOR ALL REASONABLE AND NECESSARY COSTS INCURRED AND PAID BY CONSULTANT THAT ARE ATTRIBUTABLE TO CITY'S PERCENTAGE OF JOINT, CONCURRENT, OR SOLE NEGLIGENCE, AS SET FORTH IN THE JUDGMENT, INCLUDING REASONABLE AND NECESSARY ATTORNEY'S FEES AND EXPENSES, TO CONSULTANT WITHIN SIXTY (60) DAYS OF THE DATE OF THE JUDGMENT (THE "REIMBURSEMENT ALLOCATION").

IN ITS SOLE DISCRETION, CITY SHALL HAVE THE RIGHT TO APPROVE OR SELECT DEFENSE COUNSEL TO BE RETAINED BY CONSULTANT IN FULFILLING ITS

OBLIGATION HEREUNDER TO DEFEND AND INDEMNIFY CITY, UNLESS SUCH RIGHT IS EXPRESSLY WAIVED BY CITY IN WRITING. CITY RESERVES THE RIGHT TO PROVIDE A PORTION OR ALL OF ITS OWN DEFENSE; HOWEVER, CITY IS UNDER NO OBLIGATION TO DO SO. ANY SUCH ACTION BY CITY IS NOT TO BE CONSTRUED AS A WAIVER OF CONSULTANT'S OBLIGATION TO DEFEND CITY OR AS A WAIVER OF CONSULTANT'S OBLIGATION TO INDEMNIFY CITY PURSUANT TO THIS AGREEMENT. CONSULTANT SHALL RETAIN CITY-APPROVED DEFENSE COUNSEL WITHIN SEVEN (7) BUSINESS DAYS OF CITY'S WRITTEN NOTICE THAT CITY IS INVOKING ITS RIGHT TO INDEMNIFICATION UNDER THIS AGREEMENT. IF CONSULTANT FAILS TO RETAIN COUNSEL WITHIN SUCH TIME PERIOD, CITY SHALL HAVE THE RIGHT TO RETAIN DEFENSE COUNSEL ON ITS OWN BEHALF, AND CONSULTANT SHALL BE LIABLE FOR ALL COSTS INCURRED BY CITY. THE RIGHTS AND OBLIGATIONS CREATED BY THIS PARAGRAPH SHALL SURVIVE TERMINATION OF THIS AGREEMENT.

ARTICLE 11 NOTICES

Consultant agrees that all notices or communications to City permitted or required under this Agreement shall be delivered to City at the following addresses:

Cissy Sylo, P.E.
Director of Engineering Services
Engineering Services Department
City of Frisco
6101 Frisco Square Boulevard
Frisco, Texas 75034

City agrees that all notices or communication to Consultant permitted or required under this Agreement shall be delivered to Consultant at the following addresses:

Brian Colthorp
Principal
Freese and Nichols, Inc.
1701 M. Market Street, Suite 500 LB 51
Dallas, Texas 75202

Any notice provided in writing under the terms of this Agreement by either party to the other shall be in writing and may be effected by registered or certified mail, return receipt requested.

All notices or communication required to be given in writing by one party or the other shall be considered as having been given to the addressee on the date such notice or communication is postmarked by the sending party. Each party may change the

address to which notice may be sent to that party by giving notice of such change to the other party in accordance with the provisions of this Agreement.

ARTICLE 12 MISCELLANEOUS

12.1 **Complete Agreement** – This Agreement, including the exhibits hereto labeled “A” through “G,” all of which are incorporated herein for all purposes, constitute the entire Agreement by and between the parties regarding the subject matter hereof and supersedes all prior and/or contemporaneous written and/or oral understandings. This Agreement may not be amended, supplemented, and/or modified except by written agreement duly executed by both parties. The following exhibits are attached below and made a part of this Agreement:

12.1.1 Exhibit “A,” Scope of Services.

12.1.2 Exhibit “B,” Compensation Schedule / Project Billing / Project Budget.

12.1.3 Exhibit “C,” City of Frisco Guidelines for Computer Aided Design and Drafting (CADD).

12.1.4 Exhibit “D,” City of Frisco Guidelines for Direct Expenses; General and Administrative Markup; Travel and Subsistence Expenses.

12.1.5 Exhibit “E,” City of Frisco Contractor Insurance Guidelines.

12.1.7 Exhibit “F,” Affidavit.

12.1.8 Exhibit “G,” Conflict of Interest Questionnaire, Form CIQ.

12.2 **Assignment and Subletting** – The Consultant agrees that neither this Agreement nor the work to be performed hereunder will be assigned or sublet without the prior written consent of the City. The Consultant further agrees that the assignment or subletting of any portion or feature of the work or materials required in the performance of this Agreement shall not relieve the Consultant of its full obligations to the City as provided by this Agreement. All such approved work performed by assignment or subletting shall be billed through Consultant, and there shall be no third party billing.

12.3 **Successors and Assigns** – City and Consultant, and their partners, assigns, successors, subcontractors, executors, officers, agents, employees, representatives, and administrators are hereby bound to the terms and conditions of this Agreement.

12.4 **Severability** – In the event of a term, condition, or provision of this Agreement is determined to be invalid, illegal, void, unenforceable, or unlawful by a court of

competent jurisdiction, then that term, condition, or provision, shall be deleted and the remainder of the Agreement shall remain in full force and effect as if such invalid, illegal, void, unenforceable or unlawful provision had never been contained herein.

- 12.5 **Venue** – This entire Agreement is performable in Collin County, Texas and the venue for any action related directly or indirectly, to this Agreement or in any manner connected therewith shall be in Collin County, Texas, and this Agreement shall be construed under the laws of the State of Texas.
- 12.6 **Execution / Consideration** – This Agreement is executed by the parties hereto without coercion or duress for any substantial consideration, the sufficiency of which is forever confessed.
- 12.7 **Authority** – The individuals executing this Agreement on behalf of the respective parties below represent to each other that all appropriate and necessary action has been taken to authorize the individual who is executing this Agreement to do so for and on behalf of the party for which his or her signature appears, that there are no other parties or entities required to execute this Agreement in order for the same to be an authorized and binding agreement on the other party for whom the individual is signing this Agreement and that each individual affixing his or her signature hereto is authorized to do so, and such authorization is valid and effective on the date hereof.
- 12.8 **Waiver** – Waiver by either party of any breach of this Agreement, or the failure of either party to enforce any of the provisions of this Agreement, at any time, shall not in any way affect, limit, or waive such party's right thereafter to enforce and compel strict compliance.
- 12.9 **Headings** – The headings of the various sections of this Agreement are included solely for convenience of reference and are not to be full or accurate descriptions of the content thereof.
- 12.10 **Multiple Counterparts** – This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.
- 12.11 **Sovereign Immunity** – The parties agree that the City has not waived its sovereign immunity by entering into and performing its obligations under this Agreement.
- 12.12 **Additional Representations** – Each signatory represents this Agreement has been read by the party for which this Agreement is executed and that such party has had the opportunity to confer with its counsel.

- 12.13 **Miscellaneous Drafting Provisions** – This Agreement shall be deemed drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any party shall not apply.
- 12.14 **No Third Party Beneficiaries** - Nothing in this Agreement shall be construed to create any right in any third party not a signatory to this Agreement, and the parties do not intend to create any third party beneficiaries by entering into this Agreement.
- 12.15 **Indemnity** – The parties agree that the Indemnity provision set forth in Article 10 herein is conspicuous and the parties have read and understood the same.
- 12.16 **Appropriation of Funds** – Funds are not presently budgeted for City's performance under this Agreement beyond the end of the City's 2008-2009 fiscal year. City will give Consultant sixty days (60) notice if funds for City's performance are not budgeted to continue beyond that time. City shall have no liability for payment of any money for services performed after the end of City's 2008-2009 fiscal year unless and until such funds are budgeted.

IN WITNESS WHEREOF, the parties have executed this Agreement and caused this Agreement to be effective on the latest day as reflected by the signatures below.

Effective Date: _____

CITY

City of Frisco, Texas

By: _____
George Purefoy
Title: City Manager

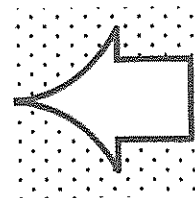
CONSULTANT

Freese and Nichols, Inc.

By: David Jackson
David Jackson
Title Principal

APPROVED AS TO FORM:

Abernathy, Roeder, Boyd, & Joplin, P.C.



STATE OF TEXAS:

COUNTY OF COLLIN:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **GEORGE PUREFOY**, KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS ____ DAY OF _____, 2008.

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: _____

STATE OF TEXAS:

COUNTY OF Dallas:

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS, ON THIS DAY PERSONALLY APPEARED **DAVID JACKSON** KNOWN TO ME TO BE THE PERSON WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT HE EXECUTED THE SAME FOR THE PURPOSE AND CONSIDERATION EXPRESSED, AND IN THE CAPACITY THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE THIS 15th DAY OF October, 2008.

Leah K. Granger

NOTARY PUBLIC IN AND FOR THE STATE OF TEXAS
My commission expires: 2/8/11

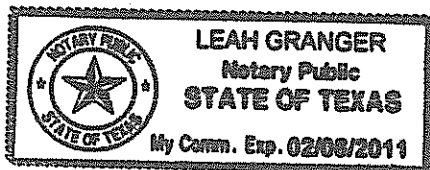


EXHIBIT "A"
SCOPE OF SERVICES

Agreement by and between the City of Frisco, Texas (City)
and Freese and Nichols, Inc. (Consultant)
For professional design and engineering services for the relocation of utilities
along the proposed TxDOT Right-of-Way for State Highway 289, from U.S.
Highway 380 to FM 3537 in Frisco, Texas

- I. PROJECT DESCRIPTION** – Consultant will provide the following services for design and engineering for the relocation of utilities along the proposed TxDOT Right-of-Way for State Highway 289, from U.S. Highway 380 to FM 3537. This Scope of Services outlines the proposed engineering services that will be provided in connection with relocation of the existing water line along SH 289 at various locations from U.S. Highway 380 to FM 3537.

II. TASK SUMMARY

A. Task One, Preliminary Investigation–

1.1 Data Collection

- 1.1.1 Obtain copies of available utility information via Record Drawings, previous investigation by the City.
- 1.1.2 TxDOT electronic data such as plans and survey information on the proposed State Highway 289 Right-of-Way, as well as horizontal and vertical alignments for the proposed roadway.
- 1.1.3 Obtain existing easements and as-built street, water, sanitary sewer, and storm drain plans from the City.

1.2 Analysis

- 1.2.1 Use the information on the proposed roadway and associated improvements from City to analyze utility relocation depths and alignments.
- 1.2.2 Identify existing easements and proposed and existing right of way along with utility conflicts with TxDOT proposed improvements.

B. Task Two, Preliminary and Final Design –

- 2.1 Consultant services are based upon City supplying the electronic version of TxDOT and City base files to insure the correct benchmarks, horizontal and vertical datum and correct Right of Way for the proposed State Highway 289. Consultant will evaluate and design the water line crossings and improvements for the proposed State Highway 289 Right-of-Way, including utility and

EXHIBIT "A"

SCOPE OF SERVICES

casing sizes needed at each intersection mentioned below (for reference, TxDOT stationing is used)

- 2.1.1 Grade conflicts, service crossing and proposed Right-of-Way (ROW) conflicts from Sta 833+50 to Sta 836+50 (near Virginia intersection).
 - 2.1.2 Grade conflicts and 12-inch water line conflicts near Panther Creek intersection (approx. 200 feet).
 - 2.1.3 Proposed Row conflicts, proposed storm drain and existing sanitary sewer conflicts near Sta 896+50 to Sta 907+00.
 - 2.1.4 Grade conflicts, proposed storm drain conflicts and 12-inch water line crossing near the Eldorado intersection.
 - 2.1.5 Fisher Road 12-inch water line (near Sta 968+30).
 - 2.1.6 Proposed ROW conflicts from Sta 987+00 to 989+00.
 - 2.1.7 Meadow Hill 12-inch water line (near Sta 983+30).
 - 2.1.8 Approximately 10 2-inch to 4-inch service crossings.
 - 2.1.9 12-inch water line crossing near Camfield Way intersection (near Sta 996+50).
 - 2.1.10 Proposed ROW conflicts near TxDOT Culvert F (Sta 1006+00 – 1007+00).
 - 2.1.11 16-inch crossing near Preston Trace intersection (Sta 1008+50).
- 2.2 Preliminary Construction Plans Submit 65% set of plans along with cost estimate to the City for review (7 copies, 11" x 17" plan sheets). The City will pass along 3 copies to the Dallas District of TxDOT for review.
 - 2.2.1 Prepare preliminary design plan and profile sheets at a scale of 1"=20' horizontal and 1"=4' vertical.
 - 2.2.2 Prepare and submit plans and specifications at 50% and 90% completion stages to the City
 - 2.2.3 Prepare preliminary details for connections to existing system as needed
 - 2.2.4 Prepare estimate of probable construction cost at each submittal
 - 2.2.5 Submit four (4) copies of preliminary plans and cost estimates for each completion interval for the City review
- 2.3 Coordination
 - 2.3.1 Provide TxDOT with two (2) copies of plans and specifications at each submittal phase as described above to allow TxDOT interim reviews of the progress of the utility relocations.
 - 2.3.2 Obtain TxDOT submittals of the progress of State Highway 289 design and coordinate the utility plans

EXHIBIT "A"

SCOPE OF SERVICES

- with the TxDOT plans of the roadway and associated improvements.
- 2.3.3 Coordinate with MACTEC (TxDOT Utility Coordination Firm) for locations and designs of other proposed utilities within the SH 289 ROW.
 - 2.4 Upon acceptance of preliminary plans by City prepare final plans (each sheet to be stamped, dated, and signed by Consultant) and submit bid proposal quantities, special provisions and technical specifications. The final submittal shall include the following:
 - 2.4.1 City title page with location map and sheet index.
 - 2.4.2 Project Layout Sheet, General Notes and Survey Control Sheets. (2 sheets)
 - 2.4.3 Plan and profile sheets of improvements at a scale of 1"=20' horizontal and 1"= 4' vertical scale. Plans will also indicate close proximity utilities in plan and actual crossings in profile. (15 sheets)
 - 2.4.4 Special detail and standard detail sheets. All details will be drawn in CADD. City standard details may be incorporated as needed. (3 sheets)
 - 2.4.5 Bid proposal, quantities, special provisions, Consultant standard contract documents and technical specifications.
 - 2.5 Submit a final cost estimate with the submission of plans which follows the items listed in the bid proposal. Two (2) sets of plans shall be submitted, dated, and stamped "preliminary." Upon approval of the plans by City, the word "preliminary" shall be removed and the plans sealed and dated. Provide City five (5) copies and one (1) set of mylar reproducibles of the "final" approved and dated plans.
 - 2.6 Consultant shall prepare and submit final construction plans to TxDOT for the required permits to perform the work in the proposed State Highway 289 Right-of-Way. Any permit or application fees will be the responsibility of the City.

C. Task Three, Bid Phase –

- 3.1 Preliminary Bid Tabulation & Review - Assist City during bid opening, making preliminary tabulation of bids, and review questionnaires and bids for completeness.
- 3.2 Qualifications Review - Review and evaluate the qualifications of the apparent successful bidder and the proposed major or specialty subcontractors. The review and evaluation will include such factors as work previously completed, equipment that is available for the

EXHIBIT "A"

SCOPE OF SERVICES

work, publicly available financial resources, technical experience, and responses from references.

- 3.3 Bid Tabulation - Prepare and distribute formal bid tabulation sheets, evaluate bids and make written recommendations to City concerning contract award.
- 3.4 Issue Construction Contract Documents - Prepare and distribute conforming (with all addenda posted) 6 copies of the construction contract documents. These services will include review of contractor's bonds, furnishing to the Contractor unsigned construction contract documents, and transmitting the construction contract documents to City for signature and distribution. Conformed drawings will also be provided in electronic format.

D. Task Four, Construction Phase—

- 4.1 Contract Administration
 - 4.1.1 Visit the site at the request of OWNER or his designee to observe the progress and quality of the executed work a maximum of five (5) visits.
 - 4.1.2 Prepare field changes and change orders as required.
 - 4.1.3 Review a maximum of ten (10) Contractor's shop drawings and submittals.
- 4.2 Project Closeout
 - 4.2.1 Attend the final "walk-through" and prepare a written "punch list" of corrective actions required of the Contractor for City acceptance of the work.
 - 4.2.2 Prepare record drawings based on information furnished by the Contractor.

E. Task Five, Additional Services – Additional Services to be performed by Consultant, if authorized by City, which are not included in the above described basic services, are described as follows:

- 5.1 Field surveying required for the preparation of designs and drawings.
- 5.2 Field layouts or the furnishing of construction line and grade surveys.
- 5.3 GIS mapping services or assistance with these services.
- 5.4 Making property, boundary and right-of-way surveys, preparation of easement and deed descriptions, including title search and examination of deed records.
- 5.5 Providing services to investigate existing conditions or facilities, or to make measured drawings thereof, or to verify the accuracy of drawings or other information furnished by City.

EXHIBIT "A"
SCOPE OF SERVICES

- 5.6 Providing renderings, model, and mock-ups requested by the City.
- 5.7 Making revisions to drawings, specifications or other documents when such revisions are 1) not consistent with approvals or instructions previously given by City or 2) due to other causes not solely within the control of Consultant.
- 5.8 Providing consultation concerning the replacement of any Work damaged by fire or other cause during the construction, and providing services as may be required in connection with the replacement of such Work.
- 5.9 Investigations involving consideration of operation, maintenance and overhead expenses, and the preparation of rate schedules, earnings and expense statements, feasibility studies, appraisals, evaluations, assessment schedules, and material audits or inventories required for certification of force account construction performed by City.
- 5.10 Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- 5.11 Providing shop, mill, field or laboratory inspection of materials and equipment. Observe factory tests of equipment at any site remote to the project or observing tests required as a result of equipment failing the initial test.
- 5.12 Conducting pilot plant studies or tests.
- 5.13 Preparing Operation and Maintenance Manuals or conducting operator training.
- 5.14 Preparing data and reports for assistance to City in preparation for hearings before regulatory agencies, courts, arbitration panels or any mediator, giving testimony, personally or by deposition, and preparations therefore before any regulatory agency, court, arbitration panel or mediator.
- 5.15 Furnishing the services of a Resident Project Representative to act as City's on-site representative during the Construction Phase. The Resident Project Representative will act as directed by Consultant in order to provide more extensive representation at the Project site during the Construction Phase. Through more extensive on-site observations of the work in progress and field checks of materials and equipment by the Resident Project Representative and assistants, Consultant shall endeavor to provide further protection for City against defects and deficiencies in the work. Furnishing the services of a Resident Project Representative is subject to the provisions of Article I, D and Attachment RPR. If City provides personnel to support the activities of the Resident Project Representative who is Consultant's agent or employee, the duties, responsibilities and limitations of authority of such personnel will be set forth in an Attachment attached to and made a part of this AGREEMENT before the services of such personnel are begun. It

EXHIBIT "A"

SCOPE OF SERVICES

is understood and agreed that such personnel will work under the direction of and be responsible to the Resident Project Representative. City agrees that whenever Consultant informs him in writing that any such personnel provided by the City are, in his opinion, incompetent, unfaithful or disorderly, such personnel shall be replaced.

- 5.16 Furnishing Special Inspections required under chapter 17 of the International Building Code. These Special Inspections are often continuous, requiring an inspector dedicated to inspection of the individual work item, and they are in addition to General Representation and Resident Representation services noted elsewhere in the contract. These continuous inspection services can be provided by Consultant as an Additional Service.
- 5.17 Preparation of Conformed or "As Bid" plans and specifications for use during the construction phase, for any copies above the amount listed in the Basic Services. These documents shall involve the incorporation of addenda items into the Contract Documents through modification of the electronic files and reprinting of the plans and specifications inclusive of the incorporated changes.
- 5.18 Assisting City in preparing for, or appearing at litigation, mediation, arbitration, dispute review boards, or other legal and/or administrative proceedings in the defense or prosecution of claims disputes with Contractor(s).
- 5.19 Performing investigations, studies and analyses of substitutions of equipment and/or materials or deviations from the drawings and specifications.
- 5.20 Assisting City in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by Consultant on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- 5.21 Providing environmental support services including the design and implementation of ecological baseline studies, environmental monitoring, impact assessment and analyses, permitting assistance, and other assistance required to address environmental issues.
- 5.22 Performing investigations, studies, and analysis of work proposed by construction contractors to correct defective work.
- 5.23 Design, contract modifications, studies or analysis required to comply with local, State, Federal or other regulatory agencies that become effective after the date of this agreement.
- 5.24 Services required to resolve bid protests or to rebid the projects for any reason.
- 5.25 Visits to the site in excess of the number of trips included in Article I for periodic site visits, coordination meetings, or contract

EXHIBIT "A" SCOPE OF SERVICES

- completion activities.
- 5.26 Any services required as a result of default of the contractor(s) or the failure, for any reason, of the contractor(s) to complete the work within the contract time.
 - 5.27 Providing services after the completion of the construction phase not specifically listed in Article I.
 - 5.28 Providing basic or additional services on an accelerated time schedule. The scope of this service include cost for overtime wages of employees and consultants, inefficiencies in work sequence and plotting or reproduction costs directly attributable to an accelerated time schedule directed by the City.
 - 5.29 Providing services made necessary because of unforeseen, concealed, or differing site conditions or due to the presence of hazardous substances in any form.
 - 5.30 Providing services to review or evaluate construction contractor(s) claim(s), provided said claims are supported by causes not within the control of Consultant.
 - 5.31 Providing value engineering studies or reviews of cost savings proposed by construction contractors after bids have been submitted.
 - 5.32 Preparing statements for invoicing or other documentation for billing other than for the standard invoice for services attached to this professional services agreement.
 - 5.33 Provide follow-up professional services during Contractor's warranty period.
 - 5.34 Provide Geotechnical investigations, studies and reports.

III. ITEMS NOT INCLUDED IN THE EXISTING SCOPE OF SERVICES.

- A. **Additional Services not included in the existing Scope of Services** – City and Consultant agree that the following services are beyond the Scope of Services described in the tasks above. However, Consultant can provide these services, if needed, upon the City's written request. Any additional amounts paid to the Consultant as a result of any material change to the Scope of the Project shall be agreed upon in writing by both parties before the services are performed. These Additional Services include the following:

- 1. **Scope of Services for the Project in Relation to Article 3, Section 3.1.2 of the Standard Form Agreement** – Under the Scope of Services to be performed by Consultant under this Agreement, Consultant shall not be responsible for performing Construction Administration Services.
- 2. **Scope of Services for the Project in Relation to Article 3, Section 3.1.4 of the Standard Form Agreement** – Under the Scope of Services to be performed by Consultant under this Agreement, the parties agree that at the time of execution of the Agreement, the requirements of the Barriers Act are

EXHIBIT "A"
SCOPE OF SERVICES

not applicable to the Scope of Services to be performed by Consultant under this Agreement.

VI. DELIVERABLES

At the completion of Tasks 1 through 4, the Consultant shall deliver the following products to the City:

- A. 90% plans, specifications, and estimates.
- B. 100% Final Draft plans, specifications, and cost estimates
- C. Final signed and sealed plans, specifications, and cost estimates.

V. PROJECT LABOR ALLOCATION

Task	Subtask	Labor Hours
<i>TASK 1</i>	Preliminary Investigation	<i>70 Hours</i>
<i>TASK 2</i>	Preliminary and Final Design	<i>430 Hours</i>
<i>TASK 3</i>	Bid Phase	<i>30 Hours</i>
<i>TASK 4</i>	Construction Phase	<i>65 Hours</i>
<i>TASK 5</i>	Additional Services	<i>0 Hours</i>
<i>GRAND TOTAL</i>		<i>595 hours</i>

VI. ATTACHMENTS (IF APPLICABLE)

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

Agreement by and between the City of Frisco, Texas (City)
 and Freese and Nichols, Inc. (Consultant)
 For professional design and engineering services for the relocation of utilities
 along the proposed TxDOT Right-of-Way for State Highway 289, from U.S.
 Highway 380 to FM 3537 in Frisco, Texas

I. COMPENSATION SCHEDULE / PROJECT BILLING SUMMARY

MONTH, YEAR	DOLLAR AMOUNT	TASK COMPLETED
October 21, 2008	--	City executes Agreement and Issues Notice to Proceed to Consultant.
October 31, 2008	--	Consultant's receipt of fully executed Agreement.
October 2008	\$10,000.00	Task One, Preliminary Investigation (Task completed and all task-related deliverables submitted to, and accepted by, City).
December 2008	\$58,200.00	Task Two, Preliminary and Final Design (Task completed and all task-related deliverables submitted to, and accepted by, City).
December 2008	\$3,000.00	Task Three, Bid Phase (Task completed and all task-related deliverables submitted to, and accepted by, City).
May 2009	\$8,600.00	Task Four, Construction Phase (Task completed and all task-related deliverables submitted to, and accepted by, City).
May 2009	\$00.00	Task Five, Additional Services (Task completed and all task-related deliverables submitted to, and accepted by, City).
July 31, 2009	\$ 4,200.00 (5% of Consultant's Fee).	Completion of Record Documents
TOTAL CONSULTANT'S FEE	\$84,000.00	

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

(Not-to-Exceed)

II. PROJECT BUDGET SUMMARY

A. Basic Services.

1. Description of Basic Services.

a. Preliminary Investigation	\$ 10,000.00
b. Preliminary and Final Design.	\$ 58,200.00
c. Bid Phase	\$ 3,000.00
d. Compliance with Barriers Act and TDLR Notice of Substantial Compliance.	\$ 000,000.00
e. Construction Phase	\$ 8,600.00
f. Completion of Record Documents.	\$ 4,200.00
g. Surveying Services.	
i. Design Surveying.	\$ 000,000.00
ii. Construction Surveying.	\$ 000,000.00
iii. Construction Staking.	\$ 000,000.00
h. Architectural Services.	\$ 000,000.00
i. Landscape Irrigation Services.	\$ 000,000.00

2. Total Basic Services (Not-To-Exceed)	<u>\$ 84,000.00</u>
---	---------------------

B. Special Services.

1. Description of Special Services.

2. Total Special Services (Not-To-Exceed)	<u>\$ 000,000.00</u>
---	----------------------

EXHIBIT "B"
COMPENSATION SCHEDULE / PROJECT BILLING / PROJECT BUDGET

C. Direct Expenses.

a. Description of Direct Expenses. (Add items applicable to this Contract).

a. Mileage Reimbursement.	\$ 0,000.00
b. Commercial Reproduction.	\$ 0,000.00
c. In-House Reproduction.	\$ 0,000.00
d. Commercial Plotting.	\$ 0,000.00
e. In-House Plotting.	\$ 0,000.00
f. Communications.	\$ 0,000.00
g. Postage, Mail, and Delivery Service.	\$ 0,000.00

b. *Total Direct Expenses (Not-To-Exceed)* \$ 0,000.00

B. General and/or Administrative Markup. (If this Section is Applicable to Contract)

a. Description of Markup. \$ 0,000.00

b. *Total Approved Markup (Not-To-Exceed)* \$ 0,000.00

C. Travel and/or Subsistence Expenses. (If this Section is Applicable to Contract)

1. Description of Travel Expenses. \$ 00,000.00

2. Description of Subsistence Expenses. \$ 0,000.00

3. *Total Approved Travel and Subsistence Expenses (Not-To-Exceed)* \$ 00,000.00

F. Project Budget, Grand Total (Not-To-Exceed) \$ 84,000.00

EXHIBIT "C"
CITY OF FRISCO
GUIDELINES FOR COMPUTER AIDED DESIGN AND DRAFTING (CADD)

1. Files shall be submitted in DWG/DXF format.
2. Files shall be georeferenced in the State Plane, Texas North Central FIPS 4202 (feet) coordinate system, using a datum of NAD 83.
3. If a surface adjustment factor is applied to the data, any surface adjustment factors used should be clearly documented on the drawing.
4. If submissions for the Project relate to a plat, the file submitted must match exactly the plat that is submitted for recording.
5. The file shall contain required features for the project type as detailed below:
 - a. Pre-Construction/As-Built Plans and/or Record Documents:
 - i. Layers from Final Plat Requirements as Applicable to Project Type.
 - ii. Water Utility Features.
 - iii. Sanitary Sewer Features.
 - iv. Storm Sewer Features.
6. Each required feature group should be provided as a separate layer within the file.
7. Layer names should be representative of the information contained in the layer.
8. Line work should be continuous (e.g. no dashed lines in required layers) and complete (connecting lines should meet at corners) within the subdivision/project. Layers outside of project/subdivision boundary may be dashed in CAD data as required for Final Plats by Frisco Subdivision Ordinance Section 5.02.

EXHIBIT "D"
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

- I. **CONSULTANT'S RESPONSIBILITY**. The Consultant shall be solely responsible for the auditing of all direct expenses, approved markup (general and/or administrative), and approved travel and/or subsistence charges, including those of its subcontractors, prior to submitting to the City for reimbursement, and Consultant shall be responsible for the accuracy thereof. Any over-payment by the City for errors in submittals for reimbursement may be deducted from the Consultant's subsequent payment(s) for services; however, this shall not be the City's sole and exclusive remedy for said over-payment.

II. **GUIDELINES FOR DIRECT EXPENSES**.

- A. **Local Transportation** – Transportation in connection with the Project, when such transportation is not a function of routine performance of the duties of the Consultant in connection with the Project, and when such transportation exceeds beyond fifty (50) miles from the Project site, shall be reimbursed at a standard mileage rate consistent with that as issued, and periodically revised, by the United States Internal Revenue Service (IRS). Under no circumstances shall City reimburse Consultant at a higher standard mileage rate or pay additional markup on charges for local transportation. Completion of City's Standard Mileage Log is required for submittal of these charges for reimbursement, including justification for each submitted expense.

Under no circumstances are charges associated with rental cars for local transportation eligible for reimbursement by City. Toll road subscriptions or toll plaza receipts are not reimbursable. Consultant agrees to place these standards in all subcontracts for work on the Project.

- B. **Supplies, Material, Equipment** – City shall reimburse the actual cost of other similar direct Project-related expenses, which are duly presented in advance and approved by City's Project Manager in writing.
- C. **Commercial Reproduction** – City shall reimburse the actual cost of reproductions, specifically limited to progress prints prepared for presentation to City at each phase of progress, and final Construction Documents prepared for distribution at bidding phase, provided that the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- D. **In-House Reproduction** - Consultant shall make arrangements with the City for prior approval of in-house reproduction rates prior to submitting these expenses for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number or reproductions,

EXHIBIT "D"
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

the date, time, description, the approved standard rate, and a justification for each submitted expense for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.

- E. **Commercial Plotting** – City shall reimburse the actual cost of plots, specifically limited to final documents, provided the Consultant has duly obtained at least three (3) quotations from commercial firms and has chosen the best value for the City. Consultant shall provide such documentation to City for review prior to submitting these expenses for reimbursement. Consultant agrees to place these standards in all subcontracts for work on the Project.
- F. **In-House Plotting** – Consultant shall make arrangements with City for prior written approval of in-house plotting rates prior to submitting these charges for reimbursement. City shall provide Consultant with a standard format for documenting these charges. Completion of the City's reproduction log is required as a prerequisite for payment, including the number of plots, the date, time, description, the approved standard rate, and a justification for each submitted charge for reimbursement.
- G. **Communications** – Reimbursement for expenses relating to electronic communications shall be limited to long-distance telephone or fax toll charges specifically required in the discharge of professional responsibilities related to the Project. Telephone service charges including office or cellular phones, WATTS, or Metro line services or similar charges are not reimbursable.
- H. **Postage, Mail, and Delivery Service** – City shall reimburse the actual cost of postage and delivery of Instruments of Service, provided the Consultant duly considers all circumstances (including available time for assured delivery) of the required delivery and selects the best value for the City, which may require comparison of delivery costs offered by three (3) or more sources or methods of delivery, which at a minimum shall include U.S. Mail. Courier service is acceptable only in circumstances requiring deadline-sensitive deliveries and not for the convenience of the Consultant and/or the Consultant's employees. Consultant agrees to place these standards in all subcontracts for work on the Project.
- I. **Meals and Other Related Charges** – Meals or any other related expenses are not reimbursable unless incurred outside a fifty (50) mile radius of the Project, and then only reimbursable for the actual cost subject to compliance with the City's currently adopted policy. Non-allowable costs include, but are not limited to, charges for entertainment, alcoholic beverages, and gratuities.

EXHIBIT "D"
**CITY OF FRISCO GUIDELINES FOR DIRECT EXPENSES; GENERAL AND
ADMINISTRATIVE MARKUP; TRAVEL AND SUBSISTENCE EXPENSES**

III. GUIDELINES FOR GENERAL AND ADMINISTRATIVE MARKUP.

- A. **Requirement of Prior Approval** – Consultant may be allowed to charge a General and/or Administrative Markup on work completed if Consultant can clearly define to City specifically what costs are included in the markup calculation. To apply General and/or Administrative Markup, Consultant must also document to City what costs would be considered direct costs. City shall issue approval in writing to allow Consultant to charge General and/or Administrative Markup. City reserves the right to reject any and all requests for General and/or Administrative Markup.

IV. GUIDELINES FOR TRAVEL AND SUBSISTENCE EXPENSES.

- A. **Requirement of Prior Approval** – City shall reimburse the actual cost of travel and/or subsistence expenses upon prior written approval by the City's Project Manager.
- B. **Adherence to Currently Adopted City Travel Policy** – Reimbursements shall be governed by the same travel policies provided for City employees according to current adopted policy. Prior to the event, Consultant shall request, and the City's Project Manager shall provide the provisions and the restrictions that apply to out-of-town reimbursements.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

I. REQUIREMENT OF GENERAL LIABILITY INSURANCE –

- A. Such policy shall name the City, its officers, agents, representatives, and employees as additional insured as to all applicable coverage with the exception of workers compensation insurance.
- B. Such policy shall require the provision of written notice to City at least thirty (30) days prior to cancellation, non-renewal, or material modification of any policies, evidenced by return receipt or United States Certified Mail.
- C. Such policy shall provide for a waiver of subrogation against the City for injuries, including death, property damage, or any other loss to the extent the same is covered by the proceeds of the insurance.

II. INSURANCE COMPANY QUALIFICATION – All insurance companies providing the required insurance shall be authorized to transact business in the State of Texas, and shall have a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).

III. CERTIFICATE OF INSURANCE – A Certificate of Insurance evidencing the required insurance shall be submitted with the contractor's bid or response to proposal. If the contract is renewed or extended by the City a Certificate of Insurance shall also be provided to the City prior to the date the contract is renewed or extended.

EXHIBIT "E"
CITY OF FRISCO CONTRACTOR INSURANCE GUIDELINES

IV. INSURANCE CHECKLIST – "X" means that the following coverage is required for this Agreement.

	Coverage Required	Limits
<u> X </u>	1. Worker's Compensation & Employer's Liability	<div> <div>▪ Statutory Limits of the State of Texas</div> </div>
<u> X </u>	2. General Liability	<div> <div>▪ Minimum \$1,000,000.00 each occurrence;</div> <div>▪ Minimum \$2,000,000.00 in the aggregate.</div> </div>
<u> </u>	3. XCU Coverage	<div> <div>▪ Minimum \$1,000,000.00 each occurrence;</div> <div>▪ Minimum \$2,000,000.00 in the aggregate.</div> </div>
<u> X </u>	4. Professional Liability	<div> <div>▪ Minimum \$ 1,000,000.00 each claim;</div> <div>▪ Minimum \$ 2,000,000.00 in the aggregate.</div> </div>
<u> </u>	5. Umbrella Coverage or Excess Liability Coverage	<div> <div>▪ An amount of \$ 2,000,000.00.</div> </div>
<u> X </u>	6. City named as additional insured on General Liability Policy. This coverage is primary to all other coverage the City may possess.	
<u> X </u>	7. General Liability Insurance provides for a Waiver of Subrogation against the City for injuries, including death, property damage, or any other loss to the extent that same is covered by the proceeds of the insurance.	
<u> X </u>	8. Thirty (30) days notice of cancellation, non-renewal, or material change required. The words "endeavor to" and "but failure" (to end of sentence) are to be eliminated from the Notice of Cancellation provision on standard ACORD certificates.	
<u> X </u>	9. Insurance company has a minimum rating of "A" by A.M. Best's Key Rating Guide, or other equivalent rating service(s).	
<u> X </u>	10. The Certificate of Insurance must state the project title and bid number.	
<u> </u>	11. Other Insurance Requirements (State Below):	

EXHIBIT "F"
AFFIDAVIT

THE STATE OF TEXAS

§

THE COUNTY OF Dallas

§

§

I, David Jackson, a member of the Consultant team, make this affidavit and hereby on oath state the following:

I, and/or a person or persons related to me, have the following interest in a business entity that would be affected by the work or decision on the Project (Check all that apply):

_____ Ownership of 10% or more of the voting shares of the business entity.

_____ Ownership of Twenty Five Thousand and 00/100 Dollars (\$25,000.00) or more of the fair market value of the business entity.

_____ Funds received from the business entity exceed ten percent (10%) of my income for the previous year.

_____ Real property is involved, and I have an equitable or legal ownership with a fair market value of at least Twenty Five Thousand and 00/100 Dollars (\$25,000.00).

_____ A relative of mine has substantial interest in the business entity or property that would be affected by my business decision of the public body of which I am a member.

_____ Other: _____

_____ None of the Above.

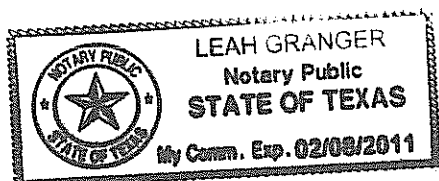
Upon filing this affidavit with the City of Frisco, Texas, I further affirm that no relative of mine, in the first degree by consanguinity or affinity, as defined in Chapter 573 of the Texas Government Code, is a member of a public body which took action on the agreement.

Signed this 15th day of October, 2008.

David Jackson
Signature of Official / Title

BEFORE ME, the undersigned authority, this 15th day personally appeared David Jackson and on oath stated that the facts hereinabove stated are true to the best of his / her knowledge or belief.

Sworn to and subscribed before me on this 15th day of October, 2008.



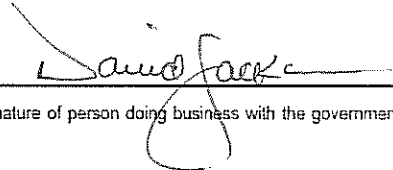
Leah Granger
Notary Public in and for the State of Texas
My commission expires: 2/8/11

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

CONFLICT OF INTEREST QUESTIONNAIRE		FORM CIQ
For vendor or other person doing business with local governmental entity		OFFICE USE ONLY
<p>This questionnaire is being filed in accordance with chapter 176 of the Local Government Code by a person doing business with the governmental entity.</p> <p>By law this questionnaire must be filed with the records administrator of the local government not later than the 7th business day after the date the person becomes aware of facts that require the statement to be filed. See Section 176.006, Local Government Code.</p> <p>A person commits an offense if the person violates Section 176.006, Local Government Code. An offense under this section is a Class C misdemeanor.</p>		<p>Date Received</p>
<p>1 Name of person doing business with local governmental entity.</p> <p style="font-size: 1.2em; margin-left: 40px;">Freese and Nichols, Inc.</p>		
<p>2</p> <p><input checked="" type="checkbox"/> Check this box if you are filing an update to a previously filed questionnaire.</p> <p style="font-size: 0.8em;">(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than September 1 of the year for which an activity described in Section 176.006(a), Local Government Code, is pending and not later than the 7th business day after the date the originally filed questionnaire becomes incomplete or inaccurate.)</p>		
<p>3 Describe each affiliation or business relationship with an employee or contractor of the local governmental entity who makes recommendations to a local government officer of the local governmental entity with respect to expenditure of money.</p> <p style="font-size: 2em; text-align: center; margin-top: 40px;">N/A</p>		
<p>4 Describe each affiliation or business relationship with a person who is a local government officer and who appoints or employs a local government officer of the local governmental entity that is the subject of this questionnaire.</p> <p style="font-size: 2em; text-align: center; margin-top: 40px;">N/A</p>		

Amended 01/13/2008

EXHIBIT "G"
CONFLICT OF INTEREST QUESTIONNAIRE, FORM CIQ

<p>CONFLICT OF INTEREST QUESTIONNAIRE</p> <p>For vendor or other person doing business with local governmental entity</p>	<p>FORM CIQ</p> <p>Page 2</p>
<p>5 Name of local government officer with whom filer has affiliation or business relationship. (Complete this section only if the answer to A, B, or C is YES.)</p> <p>This section, Item 5 including subparts A, B, C & D, must be completed for each officer with whom the filer has affiliation or business relationship. Attach additional pages to this Form CIQ as necessary.</p> <p>A. Is the local government officer named in this section receiving or likely to receive taxable income from the filer of the questionnaire?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>B. Is the filer of the questionnaire receiving or likely to receive taxable income from or at the direction of the local government officer named in this section AND the taxable income is not from the local governmental entity?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>C. Is the filer of this questionnaire affiliated with a corporation or other business entity that the local government officer serves as an officer or director, or holds an ownership of 10 percent or more?</p> <p style="text-align: center;"><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>D. Describe each affiliation or business relationship.</p> <p style="text-align: center; font-size: 1.2em;">N/A</p>	
<p>6 Describe any other affiliation or business relationship that might cause a conflict of interest.</p> <p style="text-align: center; font-size: 1.2em;">N/A</p>	
<p>7</p> <div style="display: flex; justify-content: space-between; align-items: flex-end; margin-top: 20px;"><div style="text-align: center;"> _____ Signature of person doing business with the governmental entity</div><div style="text-align: center;"><u>10/15/08</u> _____ Date</div></div>	

Amended 01/13/2006